



Agenda Item Cover Sheet

Agenda Item N^o. B-2

Meeting Date May 18, 2016

☐ Consent Section

☒ Regular Section

☐ Public Hearing

Subject:

Schedule a Public Hearing to consider enacting a Charter County Transportation System Surtax Ordinance

Department Name: County Attorney's Office/County Attorney's Office

Contact Person: Sam Hamilton

Contact Phone: 272-5670

Sign-Off Approvals:

Charles Fletcher

05/12/2016

County Attorney

Date

Charles Fletcher

05/12/2016

Managing County Attorney

Date

NA

Joint Department Director

Date

Tom Fesler

05/12/2016

Management and Budget – Approved as to Financial Impact Accuracy

Date

no E-Signature

05/12/2016

Assistant County Attorney

Date

Staff's Recommended Board Motion:

Direct staff to schedule and advertise a public hearing to consider enacting a Charter County Transportation System Surtax Ordinance.

Adoption of the Ordinance and successful approval by voters will generate an estimated \$117 million annually.

Financial Impact Statement:

Adoption of the Ordinance and successful approval by voters will generate an estimated \$117 million annually.

Background:

On May 11, 2016, the Board of County Commissioners authorized the drafting of a proposed Charter County Transportation System Surtax Ordinance.

The ordinance provides for the levy of, and referendum on, the Surtax in accordance with applicable law. Specifically, this ordinance places on the November 8, 2016, ballot a referendum question, the form of which is included in the ordinance, of whether to approve the proposed levy of a One-Half Percent (1/2%) Charter County Transportation System Surtax. The ordinance also provides for the

distribution and use of the proceeds of the Surtax, and the establishment of an Independent Oversight Committee which shall have the responsibility to, among other things, review the distribution and expenditures of the proceeds of the Surtax.

List Attachments:

Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, LEVYING A ONE-HALF PERCENT (1/2%) DISCRETIONARY TRANSPORTATION SYSTEM SALES SURTAX, SUBJECT TO THE APPROVAL BY A MAJORITY OF THE ELECTORATE OF HILLSBOROUGH COUNTY, FOR THE PURPOSE OF FUNDING TRANSPORTATION IMPROVEMENTS THROUGHOUT HILLSBOROUGH COUNTY; PROVIDING FOR DISTRIBUTION, REGULATION AND FINANCIAL MANAGEMENT OF THE PROCEEDS; PROVIDING FOR USE OF THE PROCEEDS; PROVIDING FOR DUTIES OF THE CLERK OF THE CIRCUIT COURT; PROVIDING FOR OVERSIGHT OF DISTRIBUTION AND EXPENDITURE OF PROCEEDS; PROVIDING FOR A REFERENDUM; PROVIDING FOR LIMITATION ON AMENDMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATES.

Upon motion by Commissioner _____, seconded by Commissioner _____, the following ordinance was enacted by a vote of ____ to ____, with Commissioner(s) _____ voting No; Commissioner(s) _____ being absent.

WHEREAS, on May 22, 2013, the Transportation for Economic Development Policy Leadership Group (the “PLG”) was established and comprised of each of the Commissioners of the Hillsborough County Board of County Commissioners (the “BOCC”), the Mayors of the Cities of Plant City, Tampa and Temple Terrace and the Chair of the Hillsborough Transit Authority (Hillsborough County is sometimes hereinafter referred to as the “County,” the referenced cities are sometimes hereinafter collectively referred to as the “Municipalities,” the Hillsborough Transit Authority is sometimes hereinafter referred to as “HART,” and the County, each of the Municipalities and HART are sometimes hereinafter collectively or individually referred to as the “Agencies” or the “Agency,” respectively); and

WHEREAS, the PLG initiated a broad public participation process by directing staff to conduct 36 community workshop meetings to discuss the transportation plan initiative; and

WHEREAS, the referenced community workshop meetings were conducted throughout the spring of 2015 throughout Hillsborough County; and

WHEREAS, additional public workshops were conducted in late summer and early fall of 2015; and

WHEREAS, on November 5, 2015, the PLG recommended that a one-half percent (1/2%) Charter County Transportation System Surtax (the “Transportation Surtax”) as authorized by Sections 212.054 and 212.055(1), Florida Statutes (collectively, the “Transportation Surtax Statute”) be considered by the BOCC; and

WHEREAS, the Transportation Surtax Statute authorizes the governing body of each charter county to levy a discretionary sales surtax of up to one percent (1%), subject to approval by a majority vote of the electorate of the county; and

WHEREAS, in order to address a need in Hillsborough County to invest in the community by acquiring, constructing, improving and operating transportation improvements throughout Hillsborough County, which will ensure the health, safety and welfare of the citizens, the BOCC desires to enact this Ordinance to provide for the levy of, and referendum on, the Transportation Surtax in accordance with the Transportation Surtax Statute, which action is in the best interest of the County and serves both a county purpose and a public purpose;

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA:

SECTION 1. ONE-HALF PERCENT DISCRETIONARY TRANSPORTATION SYSTEM SALES SURTAX LEVY. In accordance with Section 212.054, Florida Statutes, there shall be levied and imposed throughout the incorporated and unincorporated areas of Hillsborough County, Florida, an additional tax on all transactions occurring in Hillsborough County, Florida, which are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, Florida Statutes and communications services as defined by Chapter 202, Florida Statutes. This tax (the “Transportation Surtax”) shall be at the rate of one-half percent (1/2%) of the sales price or actual value received. The Transportation Surtax shall be levied and imposed in accordance with Sections 212.054 and 212.055(1), Florida Statutes, and the rules promulgated by the Florida Department of Revenue.

SECTION 2. EFFECTIVE DATE AND DURATION OF TRANSPORTATION SURTAX. The Transportation Surtax authorized in Section 1 of this Ordinance shall be effective commencing January 1, 2017, and shall terminate on December 31, 2031.

SECTION 3. DISTRIBUTION AND FINANCIAL MANAGEMENT OF TRANSPORTATION SURTAX PROCEEDS; SUSPENSION OF DISTRIBUTION. The proceeds of the Transportation Surtax (the “Surtax Proceeds”) levied pursuant to this Ordinance shall be deposited in a dedicated trust fund within the accounts of the County and distributed as provided for in Subsections 3(A) and (B) of this Ordinance:

- (A) 75% for Municipalities and County. Seventy-five percent (75%) of the Surtax Proceeds shall be held by the Clerk of the Circuit Court of Hillsborough County, Florida (the “Clerk”) in the dedicated trust fund solely for the benefit of and distribution to the County and the Municipalities for the planning, development, acquisition, construction, operation and maintenance of roads and bridges, sidewalks, intersections, transit and all other uses authorized by Section 212.055(1), Florida Statutes and which are consistent with the Planned Projects (the “General Purpose

Portion”).

- (1) Distributions of the General Purpose Portion shall be made to the Municipalities and the County in accordance with each Agency’s relative population as calculated utilizing the statutory formula provided in Section 218.62, Florida Statutes. (The “Distribution Formula”).
 - (2) The population data to be used in the Distribution Formula shall be updated annually by using the “*Adjusted Total Population Used for State Revenue Sharing*” as reported in the *Adjusted Population Estimates for Florida’s Counties and Municipalities*, or such other successor document, as certified to the Florida Department of Revenue by the Executive Office of the Governor.
 - (3) The County and the Municipalities will apply the portion of the Surtax Proceeds distributed to the County and the Municipalities pursuant to this Subsection 3(A), together with any interest earnings and bond proceeds generated therefrom, solely for the uses provided for in this Ordinance.
 - (4) The County and the Municipalities may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Subsection 3(A). However, each Agency receiving a distribution pursuant to this Subsection 3(A) shall provide notice to the other Agencies receiving a distribution pursuant to this Subsection 3(A) at least ninety (90) days prior to issuing bonds secured by their respective distribution of the Surtax Proceeds.
- (B) 25% Restricted for Transit. Twenty-five Percent (25%) of the Surtax Proceeds shall be held by the Clerk in the dedicated trust fund solely for the benefit of and distribution to HART to be used by HART solely in Hillsborough County for the planning, development, acquisition, construction, operation, and maintenance of transit and public transportation projects authorized under Section 212.055(1), Florida Statutes, and which are consistent with the Planned Projects (the “Transit Restricted Portion”).
- (1) Prior to the expenditure of the Surtax Proceeds distributed to HART pursuant to this Subsection 3(B), HART shall be responsible for the investment of all such Surtax Proceeds pursuant to an investment policy which, together with any amendments thereto, is approved by the HART Board of Directors.
 - (2) HART will apply the portion of the Surtax Proceeds distributed to HART pursuant to this Subsection 3(B), together with any interest earnings and bond proceeds generated therefrom, solely for the uses provided for in this Ordinance.
 - (3) Subject to compliance with applicable law and the Amendment and Restatement of the Charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Surtax Proceeds allocated to HART pursuant to this Subsection 3(B). However, HART shall provide notice to the other Agencies at least ninety (90) days prior to issuing bonds secured by the Surtax Proceeds

allocated to HART.

- (C) Suspension of Distribution. In the event it is determined by unanimous vote of the Committee established pursuant to Subsection 6(B) that an Agency has failed to comply with a material term or condition of this Ordinance, including, but not limited to, the provisions of this Ordinance governing the use of the Surtax Proceeds, and such Agency fails to correct such non-compliance within a reasonable period of time, not less than 90 days following written notice from the Committee of such non-compliance, the Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk until such time as the Committee determines the Agency has corrected the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be distributed to the Agency. Any withheld Surtax Proceeds shall be held by the Clerk until the non-compliance is corrected, and the withheld Surtax Proceeds may not be distributed to any other Agency. This Subsection (C) shall not apply to any Agency that pledges its distribution of Surtax Proceeds for new bond indebtedness incurred pursuant to law; provided, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the material terms and conditions of this Ordinance.

SECTION 4. USE OF TRANSPORTATION SURTAX PROCEEDS. The BOCC shall adopt by resolution, no later than June 30, 2016, a plan of comprehensive transportation improvement projects (the “Planned Projects”). Each of the Planned Projects shall be assigned to one or more of the Agencies. Each Agency shall be responsible for implementation of each of the Planned Projects so assigned through use of the Surtax Proceeds distributed pursuant to this Ordinance or such other sources of funds that the Agency deems appropriate.

- (A) No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the Planned Projects assigned to the Agency, and each Agency shall prudently pursue implementation of each of the Planned Projects assigned to the Agency. No Agency is authorized to remove a project from the assigned Planned Projects or add a project to its assigned Planned Projects, including any projects derived from the Transportation System Plan provided for in Subsection 4(F) of this Ordinance, unless the following conditions are satisfied by the Agency:
- (1) A public hearing is held by the governing body of the Agency after public notice is provided;
 - (2) The applicable local advisory committee, established pursuant to paragraph 6(D), has received for review the proposed removal or addition to the Planned Project list at least thirty (30) days prior to the public hearing of its Agency’s governing body;
 - (3) Before a project is removed from the Planned Projects a finding is made by the governing body of the Agency that a project is either no longer feasible or funded through other budgeted funds; and
 - (4) A super-majority of the governing body of the Agency votes to approve the removal from or addition to the Planned Projects.

If these conditions have been satisfied, an Agency may add one or more projects or remove one or more projects from its assigned Planned Projects without approval by any of the other Agencies. The term Planned Projects as used throughout this Ordinance shall in all instances include those projects added and exclude those projects removed pursuant to this Subsection 4(A).

(B) Subject to the limitations in this Section and as otherwise provided for in this Ordinance, the distributions of the Surtax Proceeds described in Subsections 3(A) and 3(B) of this Ordinance shall be expended by the Agency receiving each such distribution as determined by such Agency in its sole and absolute discretion.

(C) Nothing herein shall limit the authority of an Agency to implement an assigned Planned Project through any legal means, including, but not limited to, contracting with any of the other Agencies, or any other public or private entity, in the furtherance of the implementation of a Planned Project.

(D) Any other provision of this Ordinance to the contrary notwithstanding, all Surtax Proceeds, including any interest earnings and bond proceeds generated therefrom, shall be expended by the Agencies only as permitted by this Ordinance and Section 212.055(1), Florida Statutes.

(E) Surtax Proceeds may be pledged for new bond indebtedness incurred pursuant to law.

(F) The Agencies shall develop a comprehensive transportation system plan (the "Transportation System Plan") prior to December 21, 2021, to identify the optimal combination of roadway and transit projects that should be developed and funded beyond the tenth year of the Transportation Surtax. The Transportation System Plan shall include specific mobility, environmental, economic and social metrics which shall be used to evaluate alternative transportation options. In addition to any other requirements of this Ordinance, the Transportation System Plan shall be approved by a majority vote of the governing body of each Agency.

(G) After the tenth year of the Transportation Surtax, only those projects that are derived from the Transportation System Plan may be added as Planned Projects pursuant to Subsection 4(A) of this Ordinance.

SECTION 5. DUTIES OF THE CLERK. The Clerk shall receive the Surtax Proceeds from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with the timeframe provided for in this Section 5 and the distribution allocations provided for in Section 3 of this Ordinance. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided for in Section 3 of this Ordinance shall be made to the Agencies by the Clerk on a pro-rated basis within five (5) business days of receipt by the Clerk of Surtax Proceeds from the Florida Department of Revenue.

SECTION 6. INDEPENDENT OVERSIGHT. Independent oversight of the

distribution and expenditure of the Surtax Proceeds shall be provided in three ways: (1) annual audit of distribution and expenditure of Surtax Proceeds; (2) a countywide independent oversight committee, and (3) a countywide transportation advisory board.

- (A) Financial Audit. A separate independent audit of the distribution and expenditure of Surtax Proceeds shall be conducted annually. Hillsborough County shall contract for an annual audit, to be completed within six months after the end of the fiscal year being audited, for the purpose of determining compliance by the Clerk and each Agency with the provisions of this Ordinance relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. Prior to entering into a contract with an auditing firm to perform any audit required under Section 6, the County shall solicit proposals from at least three qualified firms.
- (B) Independent Oversight Committee. There is hereby established a countywide independent oversight committee (the "Committee"). The Committee shall meet at least twice each year to carry out the purposes of this Ordinance.
 - (1) The Committee shall be comprised of five (5) persons, each of whom shall be a retired federal or state judge. Committee members shall be selected as follows: two (2) members shall be appointed by the BOCC; one (1) member shall be appointed by the Mayor of the City of Tampa; and one (1) member each shall be appointed by the cities of Temple Terrace and Plant City. The members of the Committee must reside in Hillsborough County. No person currently serving in an elected or appointed city, county, special district, state, or federal public office, other than as a senior or retired judge in the federal or state court systems, shall be eligible to serve as a member of the Committee. Each member of the Committee shall serve for a term of three (3) years, and until a successor is appointed.
 - (2) The Committee shall have only those powers and duties specifically vested in it by this Ordinance. A majority of the members of the Committee shall constitute a quorum, and the Committee may conduct business only when a quorum is present. The Committee may act only by an affirmative vote of the majority of members present and voting, except as specifically provided in Subsection 3(C) of this Ordinance. The County and/or the Committee may adopt further guidelines to govern the operations of the Committee consistent with the requirements of this Ordinance.
 - (3) The Committee shall have the following powers and duties:
 - a. Review the results of the audit performed pursuant to Subsection 6(A) of this Ordinance and make findings as to whether the Clerk and each Agency has complied with the terms of this Ordinance. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Ordinance and whether the Surtax Proceeds have been expended in compliance with applicable state law, this Ordinance and any additional requirements that an Agency may have lawfully adopted.

- b. Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Committee shall cause a summary of the report to be published in local newspapers and the entire report and annual audit shall be made available to every library located within Hillsborough County for public review. The Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.
- c. In the tenth (10th) year, following enactment of this Ordinance, in addition to the requirements in Subsection 6 (B)(3)b., the annual report shall also include a statement regarding the progress made in developing Planned Projects.
- d. Review any proposed amendments to this Ordinance. The County shall make any proposed amendments to this Ordinance available to the Committee for review at least thirty (30) days prior to any vote to adopt the proposed amendments.

(C) Transportation Advisory Board. There is hereby established a multi-Agency Transportation Advisory Board (the "Board"), and by March 31, 2017, the Agencies shall enter into an interlocal agreement to facilitate and govern the Board (the "Interlocal Agreement"). Each Agency shall determine the composition and membership of the Board consistent with the requirements provided below and the Interlocal Agreement. The Board will be staffed by the Executive Director of the local Metropolitan Planning Organization or his or her designee or such other person as may be approved by each of the Agencies.

- (1) The Board shall be comprised of eleven (11) persons. The composition of the Board shall include:
 - a. Category A: Five (5) persons who shall each have experience in transportation policy, planning, engineering, environmental science design and/or construction, two (2) of whom shall have specific experience in transit;
 - b. Category B: Two (2) persons shall be affiliated with separate nationally recognized transportation research institutes;
 - c. Category C: Two (2) persons shall have at least eight (8) years or more experience in public finance;
 - d. Category D: Two (2) persons shall be residents of Hillsborough County.
- (2) No member shall be affiliated with any company which has contracts or does business with any Agency. Appointments to the Board shall be provided for in the Interlocal Agreement consistent with the requirements of this Subsection 6(C). No person currently serving in an elected or appointed public office shall be eligible to serve as a member of the Board. Each member of the Board shall serve for a term of three (3) years, and until a successor is appointed.
- (3) No member of the Board shall be entitled to any compensation, except that each Agency may reimburse actual expenses of members arising out of the performance of their duties as Board members.

- (4) The Board shall have only those powers and duties specifically vested in it by this Ordinance and as provided for in the Interlocal Agreement. A majority of the members of the Board shall constitute a quorum, and the Board may conduct business only when a quorum is present. The Board may act only by an affirmative vote of the majority of members present and voting. The BOCC and/or the Board may adopt further guidelines to govern the operations of the Board consistent with the requirements of this Ordinance and the Interlocal Agreement.
- (5) The Board shall have the following powers and duties:
- a. Provide independent advice and recommendations on the metrics that should be developed and used for evaluating projects for inclusion in the Transportation System Plan;
 - b. Provide independent advice and recommendations on the projects that should be included in the Transportation System Plan;
 - c. Provide an annual report on the performance of the Agencies in implementing the Planned Projects funded by Surtax Proceeds.

(D) Local Advisory Committees. Each Agency may appoint such other advisory committees as it deems appropriate for local transportation planning for its Agency.

SECTION 7. REFERENDUM.

(A) The proposed levy of the Transportation Surtax shall be presented to the Hillsborough County electorate by placing the question of whether to approve the same on the ballot at a referendum to be held on November 8, 2016.

(B) The question on the ballot shall be in substantially the following form:

Fund countywide transportation system improvements for better roads and transit choices with ½% sales tax

Do you favor transportation improvements throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Carrollwood, Sun City, including developing, maintaining and operating projects that:

- Improve intersections, roads and bridges
- Expand public transit options
- Computerize traffic light systems
- Fix potholes
- Enhance express and neighborhood bus services
- Relieve rush hour bottlenecks
- Make walking and biking safer

funded with ½% sales tax levied for 15 years and deposited in an audited trust fund with independent oversight?

A new ½% sales tax is estimated to raise approximately \$117 million annually or \$234 million in the first two years. The revenues will be shared by Hillsborough County Board of County Commissioners, incorporated cities of Tampa, Plant City and Temple Terrace, and HART (Hillsborough Transit Authority), with revenues to the County and the Cities distributed using a population based formula. All funds must be used as provided in an approved Community Transportation Plan.

Yes No

(C) The Clerk shall provide, on behalf of the BOCC, the notices to the Florida Department of Revenue required by Section 212.054(7)(a) and (b), Florida Statutes.

SECTION 8. LIMITATION ON AMENDMENT. No amendment of this Ordinance may be approved after November 8, 2016 except by super-majority vote of the BOCC after notice and review as provided in Section 6(B)(3)d. of this Ordinance and compliance with all other applicable legal requirements.

SECTION 9. SEVERABILITY. It is declared to be the intent of the BOCC that if any section, subsection, sentence, clause or provision of this Ordinance be held invalid by a court of competent jurisdiction, it shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 10. EFFECTIVE DATES.

(A) This Ordinance shall be effective upon filing with the Florida Department of State. Immediately upon passage, the Clerk is directed to so file this Ordinance and to provide copies to the Florida Department of Revenue and the Supervisor of Elections.

(B) The levy of the Transportation Surtax proposed by this Ordinance shall become effective January 1, 2017, only if approved by a “Yes” vote by a majority of those voting on the question posed at the November 8, 2016, referendum. If a majority of those voting on the question posed do not vote “Yes”, the proposed levy shall not be authorized and this Ordinance shall be of no further force and effect.

SECTION 11. NOTICE. Notice of the referendum shall be published in a newspaper of general circulation in the County, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is held, the date of first publication in said newspaper to be at least thirty (30) days before said referendum, in the manner provided in Section 100.342, Florida Statutes.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Pat Frank, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an ordinance enacted by the Board at its public hearing held on _____, 2016, as the same appears of record in Minute Book _____, of the Public Records of Hillsborough County, Florida.

WITNESS my hand and official seal this ____ day of _____, 2016.

PAT FRANK, CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

Approved as to form
and legal sufficiency:

By: _____
Chip Fletcher
County Attorney